

LEGAL NOTICE

**TOWNSHIP OF PARSIPPANY-TROY HILLS
MUNICIPAL ORDINANCES**

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, that the following Ordinance was submitted in writing at a Meeting of the Township Council of the Township of Parsippany-Troy Hills, in the County of Morris and State of New Jersey, held on **September 3, 2019** introduced and passed on first reading and the governing body will further consider the same for second reading and final passage thereof at a Meeting to be held on **October 1, 2019** at 7:00 p.m., prevailing time, or as soon thereafter as the matter may be reached, at the Municipal Building in said Township at which time and place a Public Hearing will be held thereon by the governing body, and all persons and citizens in interest shall have an opportunity to be heard concerning same. A copy of this ordinance has been posted on the Bulletin Board in the Municipal Building. During the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

KHALED MADIN
Township Clerk

**TOWNSHIP OF PARSIPPANY-TROY HILLS
MORRIS COUNTY, NEW JERSEY**

ORDINANCE NO. 2019:59

AN ORDINANCE IMPLEMENTING THE TOWNSHIP'S THIRD ROUND HOUSING PLAN ELEMENT AND FAIR SHARE PLAN CONSISTENT WITH THE TERMS OF A SETTLEMENT AGREEMENT REACHED BETWEEN THE TOWNSHIP OF PARSIPPANY-TROY HILLS AND THE FAIR SHARE HOUSING CENTER IN ACCORDANCE WITH THE NEW JERSEY FAIR HOUSING ACT, AND RELEVANT REGULATIONS AND POLICIES ADOPTED BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING.

WHEREAS, the Township of Parsippany-Troy Hills ("Township") filed a Mt. Laurel declaratory judgment action in the Superior Court of New Jersey, Law-Division bearing the caption In the Matter of the Township of Application of the Township of Parsippany-Troy Hills, Docket No. MRS-L-169-15 following the New Jersey Supreme Court's decision in Mt. Laurel IV; and

WHEREAS, the Township entered into a Settlement Agreement with Fair Share Housing Center on or about March 19, 2019 establishing the Township's Third Round affordable housing obligation for the period 1999-2025 and the compliance mechanisms by

which the Township will meet its constitutional obligation to provide for its fair share of affordable housing; and

WHEREAS, the Court entered an order on July 24, 2019 approving the Settlement Agreement by and between the Township and Fair Share Housing Center finding on a preliminary basis that the Settlement Agreement is fair to very-low, low and moderate-income households; and

WHEREAS, the Court Order approving the Settlement Agreement requires the Township to adopt an affordable housing ordinance incorporating the requirements of the Fair Housing Act and its implementing regulations including the Uniform Housing Affordability Controls into the Township code;

WHEREAS, the Township Council finds it is in the best interest of the Township to implement the terms and conditions of the Settlement Agreement and the requirements of the Court's order approving the Settlement Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Parsippany-Troy Hills, County of Morris, and State of New Jersey that Article XIV of the Land Use Volume of the Township Code, entitled "Development Fees" is repealed in its entirety and replaced by a new Article XIV entitled "Development Fees" which read as follows:

Section 1. "Article XIV DEVELOPMENT FEES

225-84. Purpose.

"A. In *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.

"B. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH approved spending plan may retain fees collected from non-residential development.

"C. This section establishes standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules and in accordance P.L.2008, c.46, sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing very low, low and moderate income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

"225-85. Basic Requirements.

“A. This section shall not be effective until approved by the Court, COAH, or a successor agency.

“B. The Township of Parsippany-Troy Hills shall not spend development fees until the Court, COAH, or a successor agency has approved a plan for spending such fees (Spending Plan).

“225-86. Definitions.

“A. The following terms, as used in this section, shall have the following meanings:

“**Affordable Housing Development.** A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred percent (100%) affordable development.

“**COAH or the Council.** The New Jersey Council on Affordable Housing and/or its successors and assigned pursuant to applicable laws.

“**Development Fee.** Money paid by a developer for the improvement of property as permitted by applicable COAH regulations.

“**Developer.** The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“**Equalized Assessed Value.** The assessed value of a property divided by the current average ratio of assessed to true value for the Township in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L. 1973, c. 123 (C.54:135a through C.54:1-35c).

“**Green Building Strategies.** Those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

“225-87. Residential Development Fees.

“A. Imposition of Fees

“(1). Within the Township of Parsippany-Troy Hills, all residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5%) percent of the equalized assessed value for residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional

dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

(2). When an increase in residential density pursuant to a “d” variance is granted under N.J.S.A. 40:55D-70d(5) (known as a "d" variance), developers shall be required to pay a “bonus” development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding filing of the "d" variance application. Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the development fees will equal one and one-half (1 1/2%) percent of the equalized assessed value on the first two (2) units; and six (6%) percent of the equalized assessed value for the two (2) non-age-restricted additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

“(a). Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

“[1]. Affordable housing developments and developments where the developer is providing for the construction of affordable units elsewhere in the Township, if permitted by Ordinance or by Agreement with the Township of Parsippany-Troy Hills, shall be exempt from development fees.

“[2]. Developments that have received preliminary or final site plan approval prior to the adoption of the first development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval is not applicable, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that building permit is issued.

“[3]. In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected when an existing structure is demolished and replaced, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the

increase in the equalized assessed value of the new structure.
Furthermore:

[a] No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.

[b] No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Parsippany-Troy Hills Township "Land Use Regulations" Ordinance.

“[4]. Nonprofit organizations which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.

“[5]. Federal, state, county, and local governments shall be exempted from paying a development fee.

“225-88. Nonresidential Development Fees.

“A. Imposition of Fees

“(1). Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.

“(2). Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

“(3). Eligible exactions, ineligible exactions and exemptions for nonresidential development:

“(a). The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted

below.

“(b). The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

“(c). Nonresidential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of nonresidential development fees, provided that an affordable housing fee of at least one percent (1%) of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.

“(d). Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption". Any exemption claimed by a developer shall be substantiated by that developer.

“(e). A developer of a non-residential development exempted from the non-residential Township development fee shall be subject to the fee at such time the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the non-residential development, whichever is later.

“(f). If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by Parsippany-Troy Hills Township as a lien against the real property of the owner.

”225-89. Collection Procedures.

“A. The Township of Parsippany-Troy Hills shall collect development fees for affordable

housing in accordance with the following:

“(1). Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the Township Construction Code Official responsible for the issuance of a building permit of the applicable approval.

“(2). For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided. The Township Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Township Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

“(3). The Township Construction Official responsible for the issuance of a building permit shall notify the Township Tax Assessor of the issuance of the first building permit for a development that is subject to a development fee.

“(4). Within ninety (90) days of receipt of that notice, the Township Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

“(5). The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Township Tax Assessor of any and all requests for the scheduling of a final inspection on a property that is subject to a development fee.

“(6). Within ten (10) business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

“(7). Should the Township fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).

“(8). Fifty percent (50%) of the initially calculated development fee shall be collected at the time of the issuance of the building permit. The remaining portion shall be tendered to Parsippany-Troy Hills Township at the time of the issuance of a Certificate of Occupancy. The developer shall be responsible for paying any

difference between the fee calculated at the issuance of the building permit and the fee determined at issuance of Certificate of Occupancy.

“(9). Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws and regulations, the Township shall issue a final Certificate of Occupancy for the subject property.

“(10). Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.

“(11). The Construction Code Official shall forward all collected development fees to Parsippany-Troy Hills Township's Chief Financial Officer who shall deposit such fees into the established "Housing Trust Fund."

“225-90. Appeal of Development Fees.

“A. A developer may challenge residential development fees imposed due to a disagreement as to the equalized assessed value of the property by filing a challenge with the County Board of Taxation. Such a challenge must be made within 45 days from the issuance of the Certificate of Occupancy. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Parsippany-Troy Hills Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party. Other challenges to the imposition of a residential development fee must be brought in the Superior Court as a prerogative writ challenge.

”B. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Parsippany-Troy Hills Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

“225-91. Affordable Housing Trust Fund.

“A. All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Township of Parsippany-Troy Hills into a separate designated interest-bearing "Housing Trust Fund", which shall be maintained by the Township Chief Financial Officer.

“B. The following additional funds shall be deposited in the "Housing Trust Fund" and shall at all times be identifiable by source and amount:

- (1). Recapture funds;
- (2). Proceeds from the sale of affordable units;
- (3). Rental income from municipally operated units;
- (4). Affordable housing enforcement fines and application fees;
- (5). Developer contributed funds for barrier free affordable housing pursuant to N.J.A.C. 5:97-8.5;
- (6). Repayments from affordable housing program loans; and
- (7). Any other funds collected in connection with the Township's affordable housing program.

C. Interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities approved by the Court.

“225-92. Use of Funds.

“A. The expenditure of all funds shall conform to a spending plan approved by the Court, COAH, or its successor agency. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to:

- (1). A housing rehabilitation program;
- (2). New construction of affordable housing units and related costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
- (3). Accessory apartment, market to affordable, or regional affordable housing partnership programs;
- (4). Financial assistance designed to increase affordability;
- (5). Conversion of existing nonresidential buildings to create new affordable units;
- (6). Purchase of and/or improvement of land to be used for affordable housing;
- (7). Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls
- (8). Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;

- (9). Green building strategies designed to be cost-saving and in accordance with accepted national or State standards,
- (10). Administration necessary for implementation of the Housing Plan Element and Fair Share Plan, or any other activity as specified in the approved spending plan and as permitted by the Court and specified in the approved Spending Plan.

“B. Funds shall not be expended to reimburse the Township of Parsippany-Troy Hills for past housing activities.

“C. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to very-low, low and moderate-income households in affordable units included in the Housing Element and Fair Share Plan. One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income for Housing Region 2, in which Parsippany-Troy Hills is located.

”(1). Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner’s association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

“(2). Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.

“(3). Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Township of Parsippany-Troy Hills, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

“D. The Township of Parsippany-Troy Hills may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance.

“E. No more than twenty percent (20%) of development fee revenues collected in any given year from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Parsippany-Troy Hills Township employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an

affirmative marketing program.

“(1). In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the twenty percent (20%) of the collected development fees that may be expended on administration.

“(2). Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH and or its successor agency, and/or Court monitoring requirements. All other housing rehabilitation costs are considered programmatic and not administrative. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

“225-93. Monitoring.

“A. The Parsippany-Troy Hills Township "Municipal Housing Liaison" shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Township), funds from the sale of units with extinguished controls, barrier free escrow funds, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as an accounting of the expenditures of the revenues and implementation of the Spending Plan approved by the Court.

“225-94. Ongoing Collection of Development Fees.

“A. The ability for the Township of Parsippany-Troy Hills to impose, collect and expend development fees shall expire with its substantive certification unless Parsippany-Troy Hills Township has filed an adopted Housing Element and Fair Share Plan with the Court, COAH or its successor agency, has petitioned for substantive certification, and has received the Court's or COAH's approval of its development fee ordinance. If the Township of Parsippany-Troy Hills fails to renew its ability to impose and collect development fees prior to the date of expiration of substantive certification, it may be subject to forfeiture of any or all

funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (C.52:27D-320). The Township of Parsippany-Troy Hills shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification, or judgment of compliance.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Parsippany-Troy Hills, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Township of Parsippany-Troy Hills are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. The Township Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Morris County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 5. After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of Parsippany-Troy Hills for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Township Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 6. This Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either his

approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

Section 7. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Morris County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Township Tax Assessor as required by N.J.S.A. 40:49-2.1.